

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESAL PRICE  
LITIGATION

)  
) MDL NO. 1456  
) Civil Action No. 01-12257-PBS  
)

THIS DOCUMENT RELATES TO:

)  
) Judge Patti B. Saris  
)

*The City of New York, et. al.*

)  
) **May 2, 2008 Status Report**

v.

) **on Behalf of the City of New**

*Abbott Laboratories, et al.*

) **York and New York Counties**  
)  
)

The undersigned counsel for the Captioned-plaintiffs (hereinafter referred to as “The City of New York and Captioned New York Counties”) hereby submit the attached status report to the Court in accordance with the Court’s June 17, 2004 Procedural Order.

Date: May 2, 2008  
New York, New York

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**May 2, 2008 Status Report for the City of New York and Captioned New York Counties**

Pending Motions

On December 21, 2007, plaintiffs filed a Motion to Compel Discovery from Defendant Boehringer Ingelheim Roxane Laboratories, Inc. Roxane's opposition was filed on January 11, 2008. Plaintiffs' reply was filed on January 25, 2008. The motion is *sub judice*.

On January 31, 2008, plaintiffs filed a Motion to Compel the Production of Data for the Designated FUL Drugs from Certain Defendants. This motion was filed in response to a letter received from Hogan & Hartson on January 23, 2008 purportedly on behalf of all defendants stating that the requested data would not be supplied. After plaintiffs' motion was filed, plaintiffs heard from numerous defendants that the Hogan & Hartson letter did not reflect their positions. On February 15, 2008, plaintiffs filed a Notice (i) of Withdrawal of Plaintiffs' Motion to Compel Production of Data for the Designated Full Drugs as to Certain Defendants; and (ii) that Plaintiffs No Longer Recognize BMS Counsel as Liaison Counsel for Discovery Purposes. Plaintiffs' motion remained outstanding only as to defendant AstraZeneca. On February 19, 2008, defendants AstraZeneca filed its Opposition to Plaintiffs' Motion to Compel Production of Data for the Designated FUL Drugs. Plaintiffs' reply was filed on February 29, 2008. On March 7, 2008, defendants Astrazeneca filed a Motion for Leave to File Sur-Reply in Further Opposition to Plaintiffs' Motion to Compel Production of Data for the Designated FUL Drugs. The motion is *sub judice*.

On February 27, 2008, defendants filed a Joint Motion to Compel the Production of Claims Data. On February 29, 2008, plaintiffs informed defendants that the requested claims data would be produced on or before March 21, 2008. Plaintiffs requested that defendants withdraw their motion to compel. Defendants declined to withdraw their motion. On March 13, 2008, plaintiffs filed a Stipulation to Extend Time for Plaintiffs' Responses to Defendants' Joint Motion to Compel the Production of Claims Data. On March 24, plaintiffs filed their Opposition to defendants' Joint Motion to Compel the Production of Claims Data. On March, 26, defendants filed a Joint-Reply in Further Support of their original Motion to Compel. On April 2, plaintiffs filed a Motion for Leave to File Sur-Reply Memorandum in Further Support of Plaintiffs' Opposition to Defendants' Joint Motion to Compel the Production of Claims Data noting that the requested claims data had also been produced and that plaintiffs had further agreed to supplement the data to address certain concerns defendants had regarding it. Plaintiffs provided the first installment of such supplement on April 28, 2008. The second installment is scheduled on or about May 9, 2008.

On February 19, 2008, defendants filed a Motion to Compel the Commissioner of the New York State Department of Health and Three Key Witnesses to Comply with Subpoenas. On March 4, 2008, the New York State Department of Health, Mark Richard Butt, Mary Alice

Brankman, Michael A. Falzano and plaintiffs filed a Cross-Motion to Quash Subpoenas Issued by Defendants to the New York State Department of Health and/or Its Current and Former Employees. On March 21, 2008, defendants filed a Joint Opposition to plaintiffs' Cross-Motion to Quash Subpoenas Issued by Defendants to the New York State Department of Health and/or Its Current and Former Employees. On March 25, 2008, plaintiffs filed an Unopposed Motion for Leave to File a Reply Memorandum in Further Support of their original Cross-Motion. On April 4, 2008, plaintiffs filed a Reply Memorandum of Law in Further Support of Movants' Cross Motion to Quash All Subpoenas Issued by Defendants to the New York State Department of Health and/or Its Current and Former Employees. Defendants' original motion to compel and plaintiff's cross motion to quash are *sub judice*.

**Certificate of Service**

I certify that on May 2, 2008 a true and correct copy of the foregoing May 2, 2008 Status Report was served on all Counsel of Record by electronic service pursuant to Case Management Order No. 2 by sending a copy to Lexis Nexis File and Serve for posting and notification to all parties.

/s/Aaron D. Hovan  
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